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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,390	10/17/2005	Franz Freudenthal	STERN25.001APC	8620
20995 7590 10/08/2010 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER SIMPSON, SARAH A				
ART UNIT		PAPER NUMBER		
3731				
NOTIFICATION DATE		DELIVERY MODE		
10/08/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/527,390

**Applicant(s)**

FREUDENTHAL ET AL.

**Examiner**

SARAH A. SIMPSON

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 September 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4-14, 16, 17, 20-29 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4-14, 16, 17, 20-29 and 31-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/13/2010
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/13/2010 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claims 4 and 7** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 4 recites, "wherein said at least one wire-like flexible adjustment element does not substantially protrude beyond the distal region of said basket so that no obstructions of said opening are present", yet claim 7 recites, "wherein the at least one adjustment element protrudes beyond the outstretched length of the at least one collecting basket". It is unclear how the adjustment element can not protrude beyond

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the distal region of the basket as well as protrude beyond the basket. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. **Claims 4-14, 16, 17, 20-29 and 32** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kusleika et al. (US 2002/0169474 A1)** in view of **Larson (US 7,585,309 B2)**.

**Regarding claim 4**, Kusleika et al. disclose an extraction device (250) for extracting objects, in particular clots, foreign bodies, etc., from cavities in a human or animal body, with at least one compressible and expandable collecting basket (270) of woven fiber ([009]) having a distal end (284) and a proximal end (286), wherein at least one wire-like flexible adjustment element (290) is integrated with said woven fiber and

secured at the distal and/or proximal end (286) in such a way that the at least one collecting basket (270) can be deliberately oriented by the latter and changed in shape ([0006]; figs. 1-2). Kusleika et al. also teach an embodiment with a channel element (5, C) in which the basket (340) comprises an opening, said opening facing away from said channel element when said basket is deployed (fig. 5). Kusleika et al. also teach an embodiment wherein the channel element (20) is proximal to the basket (30) which opens at its distal end away from the channel element (fig. 8).

Kusleika et al. fail to disclose wherein the adjustment element extends along an inner or outer surface of the basket from a proximal region to a distal region of the basket, wherein the adjustment elements can be used to change the shape of the basket outside the channel element to expand and to contract sufficiently to decrease the diameter of said cavity and enable capture of the object within said cavity of said basket and wherein the at least one wire-like flexible adjustment element does not substantially protrude beyond the distal region of said basket so that no obstructions of said opening are present.

However, Larson discloses an extraction device for extracting objects from cavities in a human or animal body, wherein the adjustment elements (134) extend along an inner or outer surface of the basket from a proximal region to a distal region of the basket and are integrated with said basket (fig. 4), wherein the adjustment elements can be used to change the shape of the basket outside the channel element to expand and to contract sufficiently to decrease the diameter of said cavity and enable capture of the object within said cavity of said basket and wherein the at least one wire-like flexible

adjustment element does not substantially protrude beyond the distal region of said basket so that no obstructions of said opening are present (figs. 1, 2, 4; column 4, lines 6-14).

Given the teachings of Larson, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the adjustment element of Kusleika et al. to extend from the proximal end of the basket to the distal end of the basket as well as change the shape of the basket outside of the channel element. Doing so would increase the strength of the basket, by providing stronger support elements, without decreasing from the baskets flexibility. Additionally, by the wire-like flexible adjustment elements not protruding past the distal end of the basket, the basket can be opened wider, allowing for larger objects to be removed from the body. Further, with the ability to change the shape of the basket outside of the channel, the user can be sure the obtrusions are captured within the basket before retrieval, thereby preventing undesired displacement while the basket is being extracted through the sheath.

**Regarding claim 5**, Kusleika et al. disclose the extraction device, wherein the at least one adjustment element (290) has one or more thin wires ([0015], lines 1-3).

**Regarding claim 6**, Kusleika et al. disclose the extraction device, wherein the at least one adjustment element (290) is arranged on the outside and/or inside of the at least one collecting basket (270), in particular at least partially integrated into the circumferential surface of the collecting basket and/or laced into this ([0015]).

**Regarding claim 7**, Kusleika et al. disclose the extraction device, wherein the at least one adjustment element (290) protrudes beyond the outstretched length of the at

least one collecting basket (270) and is arranged to be actuated in particular from the proximal end (286), in particular to be actuated via a handgrip ([0017]; wherein the handgrip is the external catheter).

**Regarding claim 8**, Kusleika et al. disclose the extraction device, wherein, with an adjustment element (290) provided at the proximal end (286) of the collecting basket (270), the latter has an asymmetrical design, in particular lengthened on one side in the area of attachment of the adjustment element (290), and/or is provided with a hook-shaped element for engagement of an adjustment and/or guide element ([0011], lines 8-12; wherein the collecting basket is capable of being any suitable shape, including an asymmetrical design).

**Regarding claim 9**, Kusleika et al. disclose the extraction device, wherein the adjustment element or elements (290) are secured on the collecting basket (270) in a branched-out configuration and are brought together in groups proximally (figs. 1-2; [0015]).

**Regarding claim 10**, Kusleika et al. disclose the extraction device, wherein the at least one adjustment element (290) is in one piece with the collecting basket ((270); [0015]).

**Regarding claim 11**, Kusleika et al. disclose the extraction device, wherein the distance between the distal end (284) of the collecting basket (270) and at least one proximal point of attachment or point of emergence of the at least one adjustment element (290) is constant for different designs of the collecting basket ([0011]; wherein

the baskets may be any suitable shape; therefore, capable of having a constant distance between distal end and proximal point of attachment).

**Regarding claim 12**, Kusleika et al. disclose the extraction device, wherein the proximal end (286) of the at least one collecting basket (270) can be fixed or is fixed in a tubular element, in particular a catheter (C), and the adjustment element or elements (290) are guided or can be guided through the tubular element (figs. 2A-2B).

**Regarding claim 13**, Kusleika et al. disclose the extraction device, wherein the at least one collecting basket (270) is designed so that it shortens in its longitudinal direction upon widening and lengthens when its cross section is reduced, and in particular can be expanded to a diameter, greater than the diameter of the cavity to be cleared, for partial widening of the cavity ([0011], lines 1-8; figs. 2A-2B).

**Regarding claim 14**, Kusleika et al. disclose the extraction device, wherein a sleeve element (266, 274) for strengthening the connection between tubular element (C) and collecting basket (270) is provided at the proximal end (286) of the at least one collecting basket ((270); figs. 2A-2B).

**Regarding claim 16**, Kusleika et al. disclose the extraction device wherein reducing elements (290) arranged transversely with respect to the longitudinal extent of the at least one collecting basket are provided, in particular in the area of the proximal (286) and/or distal ends of the collecting basket (270) and/or in the area of the at least one proximal point of attachment or point of emergence of the at least one adjustment element, and the reducing elements are in particular nooses ([0015]; wherein the tethers may be intertwined with the wires of the metal fabric to be kept in place and will

extend along the proximal lip of the basket, acting as drawstrings or nooses, drawing the end of the basket radially inwardly toward the guidewire).

**Regarding claim 17**, Kusleika et al. disclose the extraction device, wherein the adjustment element or elements (290) are fixed or movably guided in at least one tubular element (C) in particular a catheter ([0018]).

**Regarding claim 20**, Kusleika et al. disclose the extraction device, wherein a channel element (C) is provided which has an internal diameter such that the at least one collecting basket (270), a guide cannula (266) and/or tubular elements (268) and the adjustment element or elements (290) can be guided through it (fig. 2A).

**Regarding claim 21**, Kusleika et al. disclose the extraction device, but fail to disclose wherein the channel element is made of a stable and at least partially flexible material, in particular of a plastic, metal, a metal alloy, in particular nitinol, in particular a thin-walled nitinol tube.

However, Kusleika et al. teach metal fabric formed of a material which is both resilient and which can be heat treated to substantially set a desired shape. Such materials include metal alloys and nitinol ([0071]).

Given the teachings of Kusleika et al., it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the channel element with a thin-walled nitinol tube. Doing so would provide a strong and flexible channel.

**Regarding claim 22**, Kusleika et al. disclose the extraction device, wherein at least one collecting basket (270) is made of a braided fabric and/or woven fabric and/or scrim, in particular a wire braid and/or woven wire fabric and/or wire scrim and/or at

least one collecting basket is composed of a tube slotted along at least part of its length and/or is provided with a coating ([0009], lines 1-4; wherein the basket is formed of a metal fabric and may be braided).

**Regarding claim 23**, Kusleika et al. disclose the extraction device, wherein the at least one adjustment element (290) is formed from a part of a braided fabric, woven fabric, scrim, or a slotted tube ([0015]).

**Regarding claim 24**, Kuleika et al. disclose the extraction device, wherein the cuts in the slotted tube are made in such a way as to afford the maximum ratio of shortening and widening upon expansion of the collecting basket ([0024]; [0025]; wherein the metallic tubular braid, cuts in the tube, is adapted to be collapsed to lay generally along the outer surface of the guidewire. When collapsed, the cuts are closed; therefore, it is inherent that the maximum shortening and widening ratio is used).

**Regarding claim 25**, Kuleika et al. disclose the extraction device, wherein the cut or cuts in the slotted tube are made long in comparison to the lengthwise extent of the collecting basket (fig. 5; wherein the cuts toward the proximal end of the second collecting basket (340) are longer in comparison to the cuts near the distal end).

**Regarding claim 26**, Kusleika et al. disclose the extraction, wherein the at least one collecting basket (270) is made of a biocompatible material, in particular a metal or a metal alloy ([0009], lines 1-2), in particular a stainless steel or nitinol and/or the material of the at least one collecting basket (270) is coated with a material, in particular a biocompatible surface coating, heparin, a carbonization of nitinol, a nanotechnological

coating, radiopaque particles, a coating releasing active substance, an in particular microporous biotechnological or other coating ([0013], lines 13-15).

**Regarding claim 27**, Kusleika et al. disclose extraction device, wherein partial areas of the at least one collecting basket (270) are made of material of different diameter, in particular an expandable partial area (x) of the at least one collecting basket (270) is made of a material with a thinner cross section or has a braided fabric or scrim or woven fabric with filaments of different diameter ([0013], lines 1-3; wherein the dimensions of the metal fabric used to make the collecting baskets may be varied; therefore, capable of having materially different diameters).

**Regarding claim 28**, Kusleika et al. disclose the extraction device, wherein the material of the at least one collecting basket (270) in at least one partial area is chemically and/or mechanically treated, in particular etched, electrolytically polished, microground or otherwise treated ([0013], lines 13-15).

**Regarding claim 29**, Kusleika et al. disclose the extraction device wherein a guide wire (260') and/or inner mandrel is provided along which the at least one collecting basket (270) can be displaced and/or can be inserted into the cavity ([0018]; figs. 2A-2B).

**Regarding claim 32**, Kusleika et al. disclose the extraction device, wherein a means ([006]) is provided for cutting or separating objects, in particular a wire provided with a material thickening, in particular a ball, a helical portion, a noose-shaped portion, a combination of these or some other type of material thickening, which wire (260') can

be or is arranged so as to be movable inside the collecting basket (270), and/or a balloon catheter provided with a stent or such like element ([0006]; [0018]).

8. **Claim 31** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kusleika et al. (US 2002/0169474 A1)** and **Larson (US 7,585,309 B2)** and in further view of **Bates et al. (US 6,280,451)**.

**Regarding claim 31**, Kusleika essentially discloses the invention except for wherein the extraction device can be used in conjunction with an endoscope with or without provision of a channel element.

However, Bates teaches medical retrieval baskets generally are used to retrieve biological and foreign material from the body including stones. Such baskets may be used through an endoscope or a laparoscope (column 1, lines 19-22).

Given the teachings of Bates, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the device of Kusleika in view of Larson with an endoscope. Doing so would allow for the extraction device to be visualized during the surgical procedure.

9. **Claim 33** is rejected under 35 U.S.C. 103(a) as being unpatentable over **Kusleika et al. (US 2002/0169474 A1)** and **Larson (US 7,585,309 B2)** and in further view of **Broome et al. (US 2002/0082639 A1)**.

**Regarding claim 33**, Kusleika et al. disclose the extraction device as claimed in claim 4, but fail to disclose wherein a suction means is provided for suctioning of objects or parts of objects, in particular a cannula or such like tubular means which can be guided into the area of the collecting basket and can be acted on by a partial vacuum.

However, Broome et al. teach a extraction device with a suction means to remove debris and severed pieces ([0007]).

Given the teachings of Broome et al., it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the extraction device with a suction means. Doing so would remove all of the debris or unwanted objects from cavities, without removing the baskets. Therefore, multiple objects could be removed from the cavity without removing the baskets.

### ***Response to Arguments***

Applicant's arguments with respect to claims 4-14, 16, 17, 20-29 and 31-33 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SARAH A. SIMPSON whose telephone number is 571-270-3865. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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